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EXAMINER

BAYOU, AMENE SETEGNE

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3746

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/581,325	Applicant(s) HAGIST ET AL.	
	Examiner AMENE S. BAYOU	Art Unit 3746	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 18 May 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 01 June 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input checked="" type="checkbox"/> Other: <u>PTO-303</u> |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-8, 11-16, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent 19,534,411 to Frank.

In Reference to Claim 1

Frank teaches a device for retaining a fuel pump in a fuel container of a motor vehicle (see figure 1), with a pump holder (holding device (11)), with first retaining means of the pump holder (circumferential ring portion (17)), provided for supporting on a baffle pot (the circumferential ring portion receptacle could be supported on a baffle pot), and with second retaining means (annular receptacle (14)) of the pump holder, provided for supporting the fuel pump (the annular receptacle holds the fuel pump (12)), and with a damping device (comprised of vertical struts (24', 24", 24""), outer ring (26), inner ring (28), and s-shaped bars (27)) connecting the first and the second retaining means to one another, the retaining means being manufactured from plastic (see the paragraph immediately following the heading "Description of the Embodiment"), the first retaining means, the second retaining means and the damping device being manufactured as a single piece (see figure 5, where the struts, dampers, and holding

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cylinder are made from one piece), in that the damping device has arms which are angled away from each other (see figure 3 where the arms (27) are all angled away from each other), and in that during a movement of the fuel pump the arms are subject to at least a torsional or a bending load (see page 2, paragraph 3 of the machine translation), wherein the arms of the damping device include at least one first vertical arm (vertical struts (24', 24", 24''')) extending substantially in a vertical direction and first and second horizontal arms (24' is connected by molding to flange 13 and the horizontal part of the flange can be considered as first horizontal arm. The lower S bars connected to bars 24 as shown in 3 and 5 considered as the second horizontal arm 3) and extending substantially horizontally and angled away from the first vertical arm, the first and second horizontal arms being spaced apart in the vertical direction and at least one of the first and the second horizontal arms is designed as an annular element ((27) in outer ring 26 is an annular element as shown in fig 3). See page 5 paragraph 2 and page 9 paragraph 1 of the official English translated document).

In Reference to Claim 2

Frank teaches the device as claimed in claim 1 (see the rejection of claim 1 above), wherein a second vertical arm connects the first horizontal arm and the second horizontal arm (strut (24') is arranged between the upper flange 13 and the lower s-bar as shown in figure 3,5), and wherein only the second horizontal arm (that is lower s-bar) is directly connected to the second retaining means (the receptacle (14)).

In Reference to Claim 3

Frank teaches the device as claimed in claim 1 (see the rejection of claim 1 above),

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wherein the first retaining means are designed such that they are supported radially on the inside of the baffle pot (circumferential ring portion (17) would be supported radially by the baffle pot) and such that they rest axially.

In Reference to Claim 4

Frank teaches the device as claimed in claim 1 (see the rejection of claim 1 above), wherein the second retaining means have a pipe length surrounding the fuel pump (the receptacle (14) is an annular pipe that surrounds the fuel pump (12)).

In Reference to Claim 5

Frank teaches the device as claimed in claim 4 (see the rejection of claim 4 above), wherein the second retaining means have latching hooks, arranged on the pipe length, for retaining the fuel pump (see figure 7 where the receptacle (14) is formed with a detent (36) which latches onto the top of the pump (14) to hold it in place).

In Reference to Claim 6

Frank the device as claimed in claim 1 (see the rejection of claim 1 above), wherein the first vertical arm has a radially inwardly pointing hook, and in that the hook limits the vertical movement of the second retaining means (see figure 7 where the vertical strut (24") is formed with a detent (36) which latches onto the top of the pump (14) to hold it in place, which also serves to hold the receptacle (37) in place).

In Reference to Claim 7

Frank teaches the device as claimed in claim 4 (see the rejection of claim 4 above), wherein an annular element connected to the first retaining means has a radially inwardly pointing supporting element situated opposite the pipe length at a designated

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distance (see figure 7 where the vertical strut (24"), which is connected to the circumferential ring portion (17), is formed with a detent (36) which latches onto the top of the pump (14), opposite the receptacle (37), to hold it in place).

In Reference to Claim 8,16 and 18

Frank teaches the device as claimed in claim 1 (see the rejection of claim 1 above), wherein the single-piece component comprising first and second retaining means and the damping device is manufactured from plastic by injection molding (See page 4 of the English translated document. Additionally In accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e the single piece component, does not depend on its method of production, i.e. injection molding. ***In re Thorpe, 227 USPQ 964, 966 (Federal Circuit 1985).***)

In Reference to Claim 11

Frank teaches the device as claimed in claim 2 (see the rejection of claim 2 above), wherein the first retaining means are designed such that they are supported radially on the inside of the baffle pot (circumferential ring portion (17) would be supported radially by the baffle pot) and such that they rest axially.

In Reference to Claim 12

Frank teaches the device as claimed in claim 2 (see the rejection of claim 2 above),

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wherein the second retaining means have a pipe length surrounding the fuel pump (the receptacle (14) is an annular pipe that surrounds the fuel pump (12)).

In Reference to Claim 13

Frank teaches the device as claimed in claim 3 (see the rejection of claim 3 above), wherein the second retaining means have a pipe length surrounding the fuel pump (the receptacle (14) is an annular pipe that surrounds the fuel pump (12)).

In Reference to Claim 14

Frank teaches the device as claimed in claim 2 (see the rejection of claim 2 above), wherein the first vertical arm has a radially inwardly pointing hook, and in that the hook limits the vertical movement of the second retaining means (see figure 7 where the vertical strut (24") is formed with a detent (36) which latches onto the top of the pump (14) to hold it in place, which also serves to hold the receptacle (37) in place).

In Reference to Claim 15

Frank teaches the device as claimed in claim 3 (see the rejection of claim 3 above), wherein the first vertical arm has a radially inwardly pointing hook, and in that the hook limits the vertical movement of the second retaining means (see figure 7 where the vertical strut (24") is formed with a detent (36) which latches onto the top of the pump (14) to hold it in place, which also serves to hold the receptacle (37) in place).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-4, 6, 7, 9-15, 17, and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,694,857 to Harris (Harris).

In Reference to Claim 1

Harris teaches a device for retaining a fuel pump in a fuel container of a motor vehicle (see figure 1), with a pump holder (including fin members (62) and legs (88)), with first retaining means of the pump holder (the fins (62)), provided for supporting on a baffle pot (the fins are supported on a reservoir cup (30)), and with second retaining means of the pump holder (pump carrier dish(84)), provided for supporting the fuel pump, and with a damping device (the legs (88)) connecting the first and the second retaining means to one another, in that the damping device has arms which are angled away from each other (the legs (88) have a vertical portion and a horizontal portion that is arranged at 90° to the vertical portion. In addition item 62 which is attached to the horizontal portion of vertical legs 88 can be considered as a horizontal arm), and in that during a movement of the fuel pump the arms are subject to at least a torsional or a bending load (the arms would be subject to any stresses applied to the fuel pump and fuel tank, which includes bending and torsional loads), wherein the arms of the damping device include at least one first vertical arm extending substantially in a vertical direction and first and second horizontal arms extending substantially horizontally and angled away from the first vertical arm (the legs (88) have a vertical portion and a horizontal portion that is arranged at 90° to the vertical portion), the first and second horizontal

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arms being spaced apart in the vertical direction, and at least one of the first and the second horizontal arms is designed as an annular element (the vertical arms are arranged annularly around the fuel pump).

Harris fails to teach that the retaining means is manufactured from plastic, or that the first retaining means, the second retaining means and the damping device are manufactured as a single piece. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to form the two retaining means and the dampener of Harris from a single piece of material, since it has been held that forming in one piece an article which has formerly been formed in two pieces and put together involves only routine skill in the art. Additionally, it would have been obvious to one of ordinary skill in the art at the time of invention to form the apparatus out of plastic, which is disclosed by Harris as an acceptable material for vehicle fuel tanks (see column 1 lines 13-34), since plastic is light weight and durable, and will not rust like metal.

In Reference to Claim 2

Harris teaches the device as claimed in claim 1 (see the rejection of claim 1 above), characterized in that wherein a second vertical arm connects the first horizontal arm and a second horizontal arm (there are four vertical legs (88), each with an associated horizontal leg, arranged every 90° around the fuel pump, and thus every vertical arm is arranged between two horizontal arms), which is connected to the second retaining means.

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In Reference to Claim 3

Harris teaches the device as claimed in claim 1 (see the rejection of claim 1 above), wherein the first retaining means (the fins (62)) are designed such that they are supported radially on the inside of the baffle pot (the fins are attached to the cup (30) via ears (72) that are received in a lug-receiving slot (74)) and such that they rest axially.

In Reference to Claim 4

Harris teaches the device as claimed in claim 1 (see the rejection of claim 1 above), wherein the second retaining means have a pipe length surrounding the fuel pump (The fuel pump (32) is contained in an annular pipe section which is attached to the pump carrier dish (84)).

In Reference to Claim 6

Harris teaches the device as claimed in claim 1 (see the rejection of claim 1 above), wherein the first vertical arm has a radially inwardly pointing hook (the vertical arms have associated horizontal arms), and in that the hook limits the vertical movement of the second retaining means (the horizontal arms serve to limit the axial movement of the pump carrier dish).

In Reference to Claim 7

Harris teaches the device as claimed in claim 4 (see the rejection of claim 4 above), wherein an annular element connected to the first retaining means has a radially inwardly pointing supporting element situated opposite the pipe length at a designated distance (the annular reservoir cup (30) has inwardly pointing snap-pins (82) which are situated at the opposite end of the assembly from the base of pump's outer pipe).

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I In Reference to Claim 8,16,18

Harris teaches the device as claimed in claim 1 (see the rejection of claim 1 above),but fails to teach that the component is manufactured by injection molding. In accordance to MPEP 2113, the method of forming the device is not germane to the issue of patentability of the device itself. Therefore, this limitation has not been given patentable weight. Please note that even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product, i.e the single piece component, does not depend on its method of production, i.e. injection molding. ***In re Thorpe, 227 USPQ 964, 966 (Federal Circuit 1985).***

In Reference to Claim 9

Harris teaches the device as claimed in claim 1 (see the rejection of claim 1 above), wherein the fuel pump has an annular, elastomeric sealing element (annular insulating gasket (86)) for the annular sealing of an opening (pump inlet (52), see figure 2) arranged in the bottom region of the baffle pot.

In Reference to Claim 10

Harris teaches the device as claimed in claim 9 (see the rejection of claim 9 above), wherein the sealing element has an obliquely angled sealing lip (the sealing element rests on the pump carrier dish (84) which has an obliquely angled rim, which causes the edge of the sealing element to be deformed at the same oblique angle when the two are coupled together), and in that the free end of the sealing lip rests on the bottom of the

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baffle pot (the non-angled part of the sealing element rests on a filter (58) that rests on the bottom of the reservoir cup (30)).

In Reference to Claim 11

Harris teaches the device as claimed in claim 2 (see the rejection of claim 2 above), wherein the first retaining means (the fins (62)) are designed such that they are supported radially on the inside of the baffle pot (the fins are attached to the cup (30) via ears (72) that are received in a lug-receiving slot (74)) and such that they rest axially. In

Reference to Claim 12

Harris teaches the device as claimed in claim 2 (see the rejection of claim 2 above), wherein the second retaining means have a pipe length surrounding the fuel pump (The fuel pump (32) is contained in an annular pipe section which is attached to the pump carrier dish (84)).

In Reference to Claim 13

Harris teaches the device as claimed in claim 3 (see the rejection of claim 3 above), wherein the second retaining means have a pipe length surrounding the fuel pump (The fuel pump (32) is contained in an annular pipe section which is attached to the pump carrier dish (84)).

In Reference to Claim 14

Harris teaches the device as claimed in claim 2 (see the rejection of claim 2 above), wherein the first vertical arm has a radially inwardly pointing hook (the vertical arms have associated horizontal arms), and in that the hook limits the vertical movement of

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the second retaining means (the horizontal arms serve to limit the axial movement of the pump carrier dish).

In Reference to Claim 15

Harris teaches the device as claimed in claim 3 (see the rejection of claim 3 above), wherein the first vertical arm has a radially inwardly pointing hook (the vertical arms have associated horizontal arms), and in that the hook limits the vertical movement of the second retaining means (the horizontal arms serve to limit the axial movement of the pump carrier dish).

In Reference to Claim 17

Harris teaches the device as claimed in claim 2 (see the rejection of claim 17 above), wherein the fuel pump has an annular, elastomeric sealing element (annular insulating gasket (86)) for the annular sealing of an opening (pump inlet (52), see figure 2) arranged in the bottom region of the baffle pot.

In Reference to Claim 19

Harris teaches the device as claimed in claim 3 (see the rejection of claim 3 above), wherein the fuel pump has an annular, elastomeric sealing element (annular insulating gasket (86)) for the annular sealing of an opening (pump inlet (52), see figure 2) arranged in the bottom region of the baffle pot.

5. Claim 20 is rejected under 35 U.S.C. 103(a) as being unpatentable over Frank as applied to claim 2 in view of Fedelem et al. (US patent number 4790185).

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In Reference to Claim 20

Frank teaches the device as claimed in claim 2 except the following limitation which is taught by Fedelem et al.:

Only the first horizontal arm (40) of the first and second horizontal arms (40 and 36) is connected directly to the at least one of the first vertical arm (38) and wherein only the at least one vertical arm (38) of the arms is directly connected to the first retaining means (40 or 48), in figure 1. It would have been obvious to one skilled in the art to support only one of the horizontal arms on the vertical arm as taught by Fedelem et al to avoid redundancy (because it is possible to design the vertical support in such a way that only one vertical support will be able to transmit and carry the load).

Response to Arguments

6. Applicant's arguments with respect to claims 1-19 have been considered but are not found persuasive.

7. In regards to claim 1 applicant argued that the Frank fails to disclose the first and second horizontal arms being spaced apart in the vertical direction. Examiner respectfully disagrees. The official English translation document to Frank teaches that the holder 11 is manufactured in one piece (see page 9, paragraph 1). Thus as indicated in this office action (see rejection of claim 1 above) the vertical support bar 24' is attached to flange 13 which constitute one of the horizontal arms. Since the second horizontal arm is also taken as lower S bars and since the flange 13 is connected to

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elements 24 and 27 (see also page 5, paragraph 2) it is evident that the arms are spaced apart in the vertical direction.

8. In regards to claim 1 applicant argued that the horizontal arms disclosed by Harris are not spaced apart in the vertical direction. Examiner respectfully disagrees. As clearly indicated in the rejection of claim 1 above the legs (88) have a vertical portion and a horizontal portion that is arranged at 90° to the vertical portion (clearly shown in figure 1). In addition item 62 which is attached to the horizontal portion of vertical legs 88 can be considered as a horizontal arm). Thus the upper and lower horizontal arms are spaced apart in the vertical direction.

Conclusion

9. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amene Bayou whose telephone number is (571)270-

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3214. The examiner can normally be reached on Monday through Friday, 8:30am to 5:30pm EST. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Devon Kramer can be reached on 571-272-7118. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Devon C Kramer/
Supervisory Patent Examiner, Art
Unit 3746